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HUMAN RIGHTS COMMITTEE

Sixty-second session

SUMMARY RECORD OF THE 1649th MEETING

Held at Headquarters, New York,  
on Wednesday, 25 March 1998, at 10 a.m.

Chairperson: Ms. CHANET

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The meeting was called to order at 10.35 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Zimbabwe (CCPR/C/74/Add.3 and HRI/CORE/1/Add.55)

1. At the invitation of the Chairperson, Mr. Chigudu and Ms. Chatukuta (Zimbabwe) took places at the Committee table.

2. Mr. CHIGUDU (Zimbabwe) said that there had been a number of developments since the submission of his country's initial report one year earlier. The core document should be revised to include the following updated statistics: gross domestic product as of 30 June 1997, Z\$ 85,584,000,000; foreign debt, Z\$ 28,932,035,237; inflation as of 10 March 1998, 24 per cent; exchange rate against United States dollars, Z\$ 16.228 (subject to fluctuation).

3. Constitutional Amendment No. 14, which made it unlawful to discriminate against any person on the grounds of sex, had been adopted in 1996. A new law had been enacted to correct the situation outlined in para. 42 of the report. Under the new law, if a man died intestate, his wife (or wives) could inherit one third of his estate. In addition, the Government had established a Department of Women's Affairs in the Office of the President, which was headed by a woman minister. Currently, there were five women ministers, three deputy ministers and two judges. The President of the Administrative Court was also a woman. Lastly, the Ministry of Education, in consultation with the Interministerial Committee on Human Rights and Humanitarian Law, was preparing a human rights curriculum for use by all the primary and secondary schools in the country. Draft legislation was under discussion with a view to implementing the recommendation of the Interministerial Committee to incorporate the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide in domestic law (para. 67 of the report).

4. With respect to article 21, under new draft legislation designed to supersede the existing Law and Order Maintenance Act, failure to notify the police of a demonstration would not longer be characterized as a criminal offence. However, organizers would still be liable for any injury, loss or damage which occurred during the demonstration. The input of human rights organizations in framing the new legislation had been considerable. In connection with articles 19 and 21, he referred to the deployment of the Zimbabwean police to restore law and order following food riots which had occurred on 9 December 1997 and from 19 to 22 January 1998, resulting in injuries and millions of dollars worth of property damage. Under the Law and Order Maintenance Act, which had not yet been repealed, the police had requested the army to assist them in quelling the riots. The police and army had used reasonable force as strictly necessary; however, following allegations of excessive use of force, investigations were being conducted.

5. Mr. Chigudu and Ms. Chatukuta withdrew.

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The meeting was suspended at 10.55 a.m. and resumed at 11.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS

Reports of the eighth and ninth meetings of persons chairing the human rights treaty bodies (A/52/507)

6. The CHAIRPERSON drew attention to the report of the eighth meeting of persons chairing the human rights treaty bodies, held in September 1997 (A/52/507), adding that a ninth meeting of chairpersons had been convened in February. The as yet unpublished report of that meeting had been circulated to Committee members. Introducing that report, she drew attention to paragraphs 20 to 22 on staff and servicing, and pointed out that she had stressed the need for a Secretary to be assigned to each Committee. Two meetings had been held with the United Nations High Commissioner for Human Rights with regard to specific problems relating to complaints procedures (para. 23)

7. The reports of both the eighth and ninth meetings stressed the importance of universal ratification (A/52/507, paras. 25 to 28 and report of the ninth meeting, paras. 13 to 16). The report of the ninth meeting laid particular emphasis on the need for treaty bodies to draw up plans of action and the need for a global plan of action for all the committees (para. 24). In that connection, she had stressed that such a global plan of action must not affect the obligation of the Secretariat to provide all possible logistical support to the human rights treaty bodies. A document she would refer to as the Alston report, and which might be of interest for the Task Force on Working Methods, called for the harmonization of the guidelines for the drafting of reports, while, at the same time, preserving the specificity of each committee. Paragraphs 30 and 31 dealt with focused reports and paragraphs 32, with the quality of concluding observations within the context of improved approaches to the consideration of reports. Paragraph 29 dealt with the problems of small States.

8. The examination of situations in the absence of reports (paras. 25 to 28) was a highly sensitive issue. Most committees seemed to support the proposal. However, she had made known the position of the Human Rights Committee in that regard, insisting on the principle of equality of arms (para. 25). The ninth meeting had also addressed the issue of human rights training (paras. 37 to 39) and called for closer collaboration with the Office of the High Commissioner in order to increase the effectiveness of training programmes.

9. Increasingly, States were attaching importance to such meetings of chairpersons and, at the request of the States parties, a meeting had been convened of all persons chairing treaty bodies and all States parties, in which the States parties had voiced their deep concern about the problem of overlapping reports and the support they could expect from the Secretariat. They had also suggested that it would be more effective to assign one interlocutor from the Secretariat for each committee. On behalf of the Human Rights Committee, she had expressed strong support for that suggestion.

10. Ms. EVATT said that she strongly endorsed paragraph 22 protesting the restructuring of the secretariat. The Committee should stand behind the

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Chairpersons in insisting that a person be designated to act as secretary for the Human Rights Committee. The current inadequate staffing was intolerable. While the drafting of an overall plan of action for the human rights bodies, as suggested in paragraph 24, was a good idea, the first priority should be to make sure that each Committee was given the basic services it needed in order to function.

11. The question of what to do when States did not submit the requisite reports should be given further consideration. An unacceptable inequality developed between those which attempted to comply and those which made no such attempt. She believed paragraph 28 put it very well: after exploring every available alternative, there came a point when Committees had to decide to proceed with the consideration of the situation in a non-reporting State on the basis of information provided by that State to other United Nations bodies.

12. She was also in favour of encouraging contact with the other treaty bodies.

13. Mr. ANDO explained that at its latest session the Working Group, having been unable for lack of time to discuss the documents under consideration, was not in a position, as a working group, to report to the Committee on the matter.

14. Mr. POCAR, expressing full support for Ms. Chanet's representations on behalf of the Committee at the ninth meeting of Chairpersons, said that his preliminary impression was of a generally good report addressing a number of important issues. He would not dwell on the part of the report having to do with servicing of the Committees, since there was universal agreement that any reduction in staffing and resources seriously undermined the work of the treaty bodies.

15. He had been happy to see the emphasis placed on the need to reach universal ratification of all the human rights instruments - a goal already endorsed by the World Conference on Human Rights - both as a general goal and also with particular reference to small States. The Secretary-General and the High Commissioner should be given sufficient resources to conduct a study on the reasons for non-ratification by States and to launch an effort to bring them to ratification.

16. He took issue, however, with the discussion in paragraphs 25 to 28 of the possible examination of the human rights situation in a country in the absence of the State party report. The treatment of that question was unbalanced, for the report presented no arguments against that approach, except for a glancing reference, and many arguments in favour of it. He personally would be against it, because it would transform the Committee's system into an inquisitorial one. That said, imaginative approaches to persuade States to come before the Committee should of course be pursued.

17. On the other hand, he welcomed the idea of joint statements on important human rights issues, because such statements would send a strong signal. However, they should really be joint statements by the treaty bodies, and not simply by their Chairpersons. He had the impression, in that connection, that there was a tendency for the meeting of Chairpersons to view itself as a kind of superbody that was authorized to express views and not simply, as should be the

case, coordinate the views of the Committees. The position taken in the report on the in absentia issue was a case in point, as was the inappropriate suggestion in paragraph 18 that a letter should be addressed to the International Law Commission on the matter of reservations, an action that would institutionalize a superbody.

18. Mr. KRETZMER fully endorsed Mr. Pocar's comments on the in absentia issue. Even though it meant that States could avoid scrutiny simply by refusing to submit their reports, he believed that the Committee should be legalistic in holding clearly to its mandate, which was simply to review reports. The treaty bodies did not have the general supervisory function that the in absentia approach implied. It was, moreover, an issue for each Committee to decide.

19. He also agreed with Mr. Pocar on the role of the meeting of Chairpersons which was merely meant to coordinate the activities of the various Committees and not to act as a higher body. He therefore shared the concern about sending a letter to the International Law Commission on what was basically a legal question, on which there was a divergence of opinion between the Commission and the treaty bodies reflected in their general comments. Legal questions should always be addressed on the merits; a general statement by all treaty bodies would be inappropriate and would actually weaken their position.

20. Mr. SCHEININ said he agreed that more resources needed to be allocated to the treaty bodies. He felt, however, that a better case could have been made than was done in paragraphs 22 and 23; and that the proposal in paragraph 42 – for the issuance of a joint statement by the Chairpersons on the role of the treaty bodies in connection specifically with the anniversary of the Universal Declaration of Human Rights and with the treaties as a codification of the Declaration – was tangential at best. The distinctive role of the treaty bodies rested on the legal, unselective nature of the work they did, on the basis of a legal commitment by States parties; and the truly law-creating and norm-elaborating functions performed through the optional complaints procedure ought to be highlighted. The United Nations must be made aware of the unique contribution being made by the treaty bodies within the overall system.

21. He shared Mr. Pocar's opposition to the suggestion that the human rights situation in a given country should be considered in the absence of a report or a dialogue with the State party concerned, and believed that paragraphs 32 and 33 did not place enough emphasis on the uniqueness of the concluding observations as an expression of the legal expertise of the Committee in question. It happened that some of the concluding observations issued by other treaty bodies did not deal properly with some of the issues under the Covenant on Civil and Political Rights; and to compound such methodological inadequacies by attempting to judge particular human rights situations when the State party was not present would only cause further failures to take account of existing human rights problems. The in absentia approach was not impossible from a legal standpoint, but it should not be recommended that all Committees should proceed along those lines.

22. He also saw an inherent contradiction between the approaches proposed in paragraph 29 on the one hand and paragraphs 30 and 31 on the other, for to suggest that small States should be allowed to present a consolidated report to

only one Committee ran counter to the recommendation that reports should be more focused on a limited range of issues. Paragraph 31 stated the ideal position; in practice treaty bodies should choose whichever approach was appropriate.

23. Regarding paragraphs 34 to 36, while he agreed that it was proper to stress the indivisibility of rights and the centrality of gender-awareness, he would prefer to use the general comments as a vehicle, since they were based on the mandate of each Committee and on a large body of earlier work, rather than to rely on joint statements that would require all Committees to take the same approach. It might be possible to consider working, eventually, towards joint general comments.

24. Mr. EL-SHAFEI said that the relationship between the reform and restructuring of the human rights divisions within the Secretariat and the functioning and servicing of the human rights treaty bodies was a very important issue. Ensuring the sound functioning of the treaty bodies should be one of the priorities of the United Nations system for the promotion of human rights. The United Nations High Commissioner for Human Rights was to be commended on her efforts to raise funds through voluntary contributions, as there was a definite need to recruit more and better qualified staff.

25. With regard to the meeting with the representatives of States parties, referred to in paragraph 12 of the ninth report, he would be grateful if the Chairperson could indicate whether there had been a specific agenda for that meeting and, if so, what items had been discussed. Like other members of the Committee, he had long been in favour of holding meetings with the representatives of States parties in order to discuss the concerns of the treaty bodies and ways of promoting their work; he wondered whether the meeting in question could be regarded as a first step in that direction.

26. As to reservations to treaties, he believed that the Committee should devote more time to the issue. He expressed appreciation to the Chairpersons for their statement in paragraph 18 of the report that a monitoring body could not perform its function of determining the scope of the provisions of a convention effectively if it was precluded from exercising a similar function in relation to reservations. That was an effective means of safeguarding the rights of the treaty bodies with regard to the interpretation of certain actions by States parties.

27. Concerning the optional complaints procedures, he agreed fully with the points made in paragraphs 22 and 23 of the report. As to the practice of examining situations in the absence of reports, referred to in paragraph 25, it was clear that the Chairpersons were aware of its disadvantages. It was to be hoped that the Committee would not face such a situation.

28. In other respects, he endorsed the comments made by Mr. Pocar and Mr. Scheinin.

29. Mr. BUERGENTHAL, referring to paragraph 25 of the report, said that, while he was not prepared to state that the Committee did not have the authority under article 40 of the Covenant to examine the human rights situation in a country in

the absence of a report, the legal and practical aspects of the issue required careful consideration, preferably by a small working group.

30. With regard to reservations to treaties, referred to in paragraphs 17 and 18 of the report, the Committee should ponder the wisdom of sending a letter to the International Law Commission as suggested; further study was needed.

31. As to the fiftieth anniversary of the Universal Declaration of Human Rights, referred to in paragraph 42 of the report, he believed that emphasis should be given to the unique role of the treaty bodies in advancing the cause of a global human rights culture and the rule of law.

32. With regard to staff and servicing (paras. 20-21 of the report), he believed that the Committee should adopt a resolution addressed to the United Nations High Commissioner for Human Rights, emphasizing the need for a committee secretary and appropriate staff.

33. Lastly, he supported the recommendation contained in paragraph 30 of the report concerning focused reports.

34. Mr. KLEIN said that since article 40 of the Covenant did not specify what action should be taken if States parties did not meet their reporting obligations, the Committee could go along with the proposals outlined in paragraphs 25 to 28 of the report. The issue did not arise for the Committee since it had a large number of reports before it, and not enough time in which to consider them.

35. He fully endorsed the proposal made in paragraph 30 concerning focused reports; progress along those lines was being made in the small working group.

36. Lastly, with regard to reservations, he was not in favour of sending a letter, as proposed in paragraph 18 of the report. It was not clear whether the members of the Committee could agree on the content of such a letter, and even if they did, other committees might not support it.

37. Ms. MEDINA QUIROGA, referring to paragraphs 20 and 21 of the report, endorsed Mr. Buergenthal's proposal that the Committee should make a formal statement concerning its staffing needs.

38. She agreed with the points made in paragraph 30, concerning focused reports, and paragraph 32, on the quality of concluding observations. However, regarding paragraphs 34 to 36 of the report, she tended to agree with Mr. Scheinin that joint statements were not really desirable.

39. Concerning human rights training, she welcomed the statements made in paragraphs 37 to 39 of the report. Another positive development was the fact that the Chairpersons has taken note with appreciation of the "Guidelines for the exercise of their functions" adopted by the Committee (para. 40).

40. Mr. PRADO VALLEJO said that, while he had not had sufficient time to peruse the report in its entirety, it seemed to him that paragraph 30 sought to limit the issues that could be addressed by States parties in their reports. That was

inappropriate, as each State party must present its report in the manner it deemed suitable, so long as it was in accordance with the Covenant.

41. He, too, was concerned that the meeting of Chairpersons might be seeking to establish itself as a new human rights body. Its function was simply to coordinate the efforts of the various human rights bodies. It could, however, demand the immediate resolution of the staff and servicing problems that were impeding the Committee's functioning. Under no circumstances, however, should the meeting of Chairpersons become involved in programming the work of the Committees.

42. Lastly, with regard to paragraph 25, if what was important was the dialogue between the Committee and States parties, then in cases where a periodic report was long overdue, the Office of the United Nations High Commissioner for Human Rights should be requested to intervene to promote compliance by States parties with their reporting obligations.

43. Mr. ZAKHIA, referring to paragraphs 25 to 28, said that States parties which did not submit reports were neutralizing the Committee's efforts to strengthen respect for human rights. The Committee should therefore consider proceeding with its work on the basis of information obtained from other sources.

44. Mr. YALDEN said that, like previous speakers, he did not favour the idea of the Committee considering a situation in the absence of a report from the State party concerned; it should think carefully before taking such a decision. He agreed that the meeting of Chairpersons should not turn into a kind of superbody since that would not assist the Committee in its work.

45. Lastly, the suggestion regarding the launching of a "major new programme to provide adequate training" (para. 37) was an excellent idea, but since it had financial implications he did not feel he could support it given the difficult financial situation of the Organization.

46. Mr. BHAGWATI agreed that the Committee should adopt a resolution calling for additional support staff, and that more discussion was needed on the issue of reservations to treaties and what to do in cases where a State failed to submit reports as required. The purpose of the meeting of Chairpersons should be simply to coordinate the treaty bodies' efforts, rather than to dictate what they should do. Lastly, he supported the comments made in paragraphs 37, 38 and 39 regarding human rights training.

47. The CHAIRPERSON, referring to the concerns expressed by Mr. Yalden about financial implications, said that the proposal in paragraph 37 would not entail new expenses but rather the redistribution of existing ones. The Chairpersons believed that money that was being spent on low-impact training programmes could be used more effectively.

48. A major issue raised during the informal meeting with representatives of States parties had been the difficulties that States parties had producing the reports because the same questions appeared over and over again.

49. While the wording of paragraph 18 on reservations to treaties might seem to indicate that the Chairperson would be responding on behalf of all the treaty bodies, that was not the case. The Chairperson of the meeting of Chairpersons had received a letter from the Chairman of the International Law Committee, as had the various treaty bodies, and felt compelled to respond. However, that did not preclude the treaty bodies from responding as well.

50. Similarly, the paragraphs concerning the examination of situations in the absence of reports should not be taken as a directive to the Committee. While there was admittedly an imbalance in the arguments, paragraph 28 clearly left the decision on what to do up to the individual Committees.

51. Lastly, in answer to the comments made regarding the nature of the meeting of Chairpersons, she pointed out that other treaty bodies and States had stated that they would like the meeting of Chairpersons to have more authority. Regarding the report itself, the tone might be an imperative one because of the personality of the author but the content was reflective. It was, however, true that the Chairpersons had sought to take advantage of their meeting to put pressure of the Office of the High Commissioner for Human Rights to improve the treatment of the treaty bodies, particularly as regards staffing. Nevertheless, the Chairpersons did not want the report to be a directive but were attempting, unsuccessfully perhaps, to strike a balance.

The meeting rose at 1 p.m.